IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 95 of 1988

The Commissioner of Income Tax,
Bombay City I, Bombay .. Applicant.
vs.

M/s. Tata Iron & Steel Bombay House,
Bombay. ..... Respondent

Mr. D. S. Chopra for Applicant.
Mr. P. C. Tripathi with
Mr. Dinesh Vyas, Sr. Advocate for Respondent.

CORAM: V**. C. DAGA AND A. S. AGUIAR JJ.**

Date: 4th July, 2005.

ORAL JUDGMENT: (Per V. C. Daga J.)

1. This reference is at the instance of the Revenue- applicant, arising out of the order of the Income Tax Officer for the Assessment Year 1979-80., under section 256(1) of the Income Tax Act (ITR for short), 1961.

2. The question of law referred to this court are as follows:

(1) Whether payment of “record production bonus” of Rs.12,83,946/- by assessee – company to its employees was hit by section 36*1)(ii)?

(2) Whether payment of M. N. Dastur & Co., (for preparing feasibility report of Rs.32 lacs and travelling expenses of Rs.27,424/- incurred by staff of M. N. Dastur & Co., was allowable as revenue expenditure?

3. Whether expenditure of Rs.18.81 lacs on fabrication of cooler was capital expenditure?
4. Whether entire initial contribution to superannuation fund was allowable in Assessment Year 1979-80?
5. Whether provisions of section 40(c) or section 40-A(5) applied in the case of employee – director of assessee company?
6. Whether the following expenditure was hit by section 37 (3-A):

i)	Diaries & Calendars	....	Rs.43,341/-
ii)	Brochure highlighting achievements of Adityapur	...	Rs.1,668/-
iii)	Film shows	...	Rs.10,000/-
iv)	Publishing of Chairman's statement	...	Rs.2,06,750/-

3. As to Question No. 1:

i) This question relates to the payment of "record production bonus" in the sum of Rs.12,83,946. It appears that the Income Tax Officer has disallowed the said payment, though; he, as a fact, found that the said amounts have been paid @ Rs.27/- per employee for giving record production , as per the long standing practice of the management so as to encourage and appreciate the extra

labour put by the workers. At this juncture it will not be out of place to mention that the concept of bonus, as understood, in common parlance is a payment to the workers, out of extra profit, earned by the employer. In this case, though the payment made is styled as 'bonus' but this payment is not out of extra profit. It was not paid after earning extra profit. But this payment was irrespective of the fact whether or not there was a profit, made pursuant to the commitment made to the workers for showing extra performance. The nature of payment has its own significance to decide the question involved.

ii) The Commissioner of Income Tax (Appeals) agreed with the submissions advanced by the assessee and was pleased to hold that this payment was made to the workers to motivate them to put extra labour. The finding was also recorded that this payment was made out of commercial expediency. In the result, this expenditure was allowed by the CIT (Appeals).

iii) The aforesaid allowance was upheld by the Tribunal in appeal. The Tribunal also recorded a finding that on account of record production given by the workers, additional remuneration was required to be paid to them

as per prevailing practice. The question of law referred arises out of this finding recorded by the Tribunal.

iv) Having heard rival parities on the above question, it is not in dispute that this payment was made on account of additional production or for giving record production by the workers/ employees. The factum of having given record production was and is not in dispute. The Tribunal has recorded positive finding of fact on this aspect. Needless to mention that all the three authorities below have proceeded on the premise that the record production was given by the workers and the amount was paid as per the long standing practice of the management to encourage and appreciate the performance of the workers. In this view of the finding of fact, we are of the view that this amount could not have been disallowed by the ITO. Accordingly, we hold that this payment is not hit by section 36(1)(ii) of the Act. We, accordingly answer the question in favour of the assessee and against the Revenue.

4. As to question no. 2 :

i) We, now, proceed to consider question no.2, with respect to

payments made to M/s. Dastur & Co., in the sum of Rs.32 lacs, for preparing feasibility report. and travelling expenses incurred in the sum of Rs.27,424/- which were disallowed by the I.T.O.

ii) ITO as well as the 1st Appellate Authority Tribunal, have recorded a finding of fact that this amount was spent for preparation of feasibility report exclusively for the purpose of business, and, therefore, represented deductible expenditure. However, the I.T.O., did not treat it as Revenue expenditure. CIT (A) and the Tribunal both went on to observe that the feasibility report was required to be undertaken with a view to maintain and to increase the profitability of the company and to reduce expenditure of the company as such expenses were of Revenue in nature.

iii) The learned counsel for the Respondent - assessee to support the findings recorded by the CIT (appeals) as well as the Tribunal and to support it placed reliance on the judgment of this court in the case of **Commissioner of Income Tax VS. Abbot Laboratories (I) Pvt. Ltd., reported in [1993] 202 ITR 818**, wherein this court has held that if the object of availing the services of the expert was to improve the productivity and production efficiency were, not in connection with the establishment of new plant or a new project or a new product then there was no element of enduring benefit in it and therefore, such expenditure incurred by the assessee could not be said to be

capital in nature.

iv) We have carefully considered the facts of the present case. It is not in dispute that the object of the entire exercise for which the services of the expert, M/s. M. N. Dastur & Co., were availed by the assessee was with a view to derive maximum benefit out of the existing resources. In that view of the matter the issue squarely stands covered by the judgment of this court in the case of **Abbot Laboratories** (supra).

v) In the result, we hold that the expenditure incurred for payments made to M. N. Dastur & Co., in the sum of RS.32 lakhs and travelling expenses of Rs.27,424 incurred by the staff, were the expenses in the nature of revenue expenditure and not capital in nature. Accordingly, we answer the said issue in favour of the assessee and against the revenue.

5. Question No. 3:

i) This question relates to the expenditure incurred in the sum of Rs.18.81 lacs on fabrication of cooler. The issue involved is what could be the nature of this expenditure? While dealing with this question the ITO held it to be a capital expenditure and disallowed it. As against this the CIT (Appeals) and Tribunal allowed the deduction of the expenditure made on account of fabrication of

cooler holding it to be expenditure incurred for scientific research. The Tribunal recorded a positive finding of the fact that the main component of the said amount of Rs.18,81 lacs, consisted of salaries and wages of the personnel engaged in the said work.

ii) The CIT (Appeals) and Tribunal accepted the assessee's claim that the assessee has been designing and developing and manufacturing proto-types machinery and were incurring expenditure on scientific research; taking into account the fact that over the past decade similar expenses incurred by way of cost of designing, developing and manufacturing various items of plant and machinery have been allowed by the Income Tax Authorities and that the earlier orders in this behalf have become final and conclusive for want of further challenge at the instance of Revenue. Since the Revenue did not challenge the decisions given in the earlier years and have accepted the same, it would not be open for them to challenge the same in view of the Apex Court judgment in the case of **Berger Paints India Ltd. vs. Commissioner of Income Tax** reported in **[2004] 266 ITR 99 (S.C.)**.

iii) It is thus not open for the Revenue to object to the expenditure on this count. In this view of the matter, we hold that the expenditure incurred in the sum of Rs.18.81 lacs for fabrication of cooler is allowable for deduction as expenditure incurred for carrying out scientific research.

6. As to question No.4 :

Question no. 4 relates to the contribution to the superannuation fund. Both the counsel agree that the said question is squarely covered by the decision of the Apex Court in the case of **Commissioner of Income Tax vs. Sirpur Paper Mills, reported in [1999] 237 ITR 41 (S.C.).** In this view of the matter, we answer the said question in the affirmative, iie. , in favour of the assessee and against the Revenue.

7. As to Question no. 5 :

The question no.5 (supra) relating to the interpretation of section 40-A(5) of the Act is concerned, the same is covered by the decision of this court in the case of **Commissioner of Income Tax vs. Hico Products Pvt. Ltd. [1993] 201 ITR page 567.** Following the same ratio for the reasons recorded therein we hold that section 40(c) is applicable and not 40-A(5) of the Act.

8. As to question no. 6:

The above question relating to the expenditure on account of diaries and calendars etc., is concerned the same has not been pressed by the the learned counsel appearing for the Revenue. Consequently it needs no adjudication.

9. All the above questions referred to us stands adjudicated in terms of this order. Reference stands disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)